

THE FAMILY COURT OF THE STATE OF DELAWARE

Form 509 I

(rev. 10/02)

INSTRUCTIONS FOR CHILD SUPPORT CALCULATION

The Family Court of the State of Delaware has established the Delaware Child Support Formula under Family Court Civil Rule 52(c). This formula outlines the procedure for determining a child support obligation in the State of Delaware. The formula is based on the following principles pursuant to 13 Delaware Code §514:

- Each parent is entitled to keep a minimum amount of income for their basic needs.
- The child(ren)'s basic needs are taken care of before the parents may retain any additional income.
- If income is available after the primary needs of the parents and child(ren) are taken care of, the child(ren) is (are) entitled to share in any additional income of the parents.

In determining each parent's child support obligation the Court considers each parent's ability to pay. Ability to pay includes the health, income and financial circumstances, and earning capacity of the parties, the manner of living to which the parties have been accustomed if they resided as a family unit and the general equities inherent in the situation.

The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. The Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be inequitable to the parties involved. Dalton v. Clanton, Del. Supr., 55 A.2d 1197 (1989).

An automated version of the Child Support calculation is available online at <http://courts.state.de.us/family>.

INCOME ATTRIBUTION

The Court will use a parent's actual income for calculating child support if the parent is fully employed in a manner commensurate with their training and experience. A **Rule 16A Financial Report Form** is required to be submitted with supporting documentation at the mediation and before trial. Adequate supporting documentation usually is the parent's most recent tax returns, W-2 Forms, and three most recent pay stubs. Parents who are unemployed or underemployed either voluntarily or due to their own misconduct, and parents who fails to provide adequate documentation or to appear for the hearing or mediation may be "attributed" income. The Court will examine earnings history, employment qualifications and the current job market. Wage surveys for individual occupations compiled by government agencies can be used to estimate earning capacity (and are available in the Resource Centers of each Family Court). Absent adequate information, a parent may be attributed at least as much income as the other party. Additionally, every parent is presumed to have an earning capacity of no less than \$1,300 per month. Parents who suffers a loss of income due to their own misconduct may have their support obligation calculated based upon actual current earnings where over a reasonable period of time they have earnestly sought to achieve maximum income capacity.

NET AVAILABLE INCOME

Net available income for both parents is used for calculating an obligation under the Delaware Child Support Formula. Net income is determined by taking gross income and subtracting taxes, other important payroll deductions and a self support allowance. All amounts must be monthly. To convert from weekly, multiply by 52 and then divide by 12. For biweekly, multiply by 26 and then divide by 12. All amounts should be rounded to the nearest whole number.

Line 1--Monthly Gross Income--Generally, all income must be included in the child support calculation. The Court can exclude second job income upon consideration of its history, purpose, amount and effect on visitation. Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. However, a cost of living stipend given to an employee as compensation due to transfer to a high cost location will not be included as income as long as it is clearly identified on pay documents. **Monthly Gross Income** is the combination of the following:

Wages: This includes salaries, wages, commissions, bonuses and any other income (other than self-employment income) that is subject to Federal Retirement and/or medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax".

Self: All income earned as an independent contractor and subject to federal self-employment tax.

Unearned: All other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

Nontax: All other income not subject to income taxation. This includes most Social Security Disability (SSD) or retirement benefits and some pension/disability benefits issued by private corporations. Such benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Order (Line 21) dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received.

Line 2--Taxes: Utilizing the income tax withholding tables distributed by the IRS and Delaware Department of Revenue, record each parent's income tax liability based upon a single tax status with one (1) exemption. Enter the amount for each parent for each of the separate taxes identified. A tax estimation worksheet is also available in the Family Court Resource Center. Add these taxes across the line and enter the result in the appropriate column.

Line 3--Allowable Deductions (add the following across the line and enter the result in the appropriate column):

Medical Insurance--Monthly medical insurance premiums (including COBRA payments) paid by either parent regardless of persons covered by the policy.

Pension--Enter any mandatory retirement contributions. If that amount is less than 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (including mandatory) of gross income may also be deducted.

Union Dues--Enter the average monthly union dues.

Other--If not already deducted from gross income, enter the monthly amount of any court ordered alimony payments to the other parent, or other allowable business expenses (such as supplies required by the employer to be purchased). Alimony paid must also be subtracted from taxable income when calculating Federal and State income tax liability (but not "FICA").

Line 4--Self Support Allowance: The self-support allowance is the minimum amount of income necessary for a parent to remain productive in a workplace. Each parent is given a self support allowance of \$850.

Line 5--Net Income after Self Support: Subtract taxes (Line 2), Deductions (Line 3) and Self Support (Line 4) from Gross income (Line 1).

Line 6--Number of Children Not of this Union Supported by each Parent: Enter the number of children of other relationships to whom a duty of support is owed either in or out of each parent's household. Children outside a parent's household should only be counted if there is a court order for support or proof of a pattern of support.

Line 7--Adjustment for Support of Other Children: Enter the appropriate percentage as determined by the number of children on Line 6 and the table below (but not more than 50%):

Number of Children	Percentage
0	100%
1	84%
2	74%
3	67%
4	61%
Each Additional	minus 4%

Line 8--Net Available for Primary Support: Multiply each parent's Net Income after Self Support (Line 5) by the percentage on Line 7. Enter the result for each parent. Add the figures for Father and Mother to get the total available income. Enter the result in the total column.

Line 9--Share of Total Net Available: Divide the Net Available for Primary Support for each parent (Line 8) by the Total Net Available for Primary Support (Line 8 Total). Enter the result for each parent.

Extraordinary Medical Expenses--The Formula also provides that the person with whom the child(ren) resides is responsible for the first \$350 of unreimbursed medical costs actually expended each calendar year. Any additional amount is divided by the parents according to the **Share of Total Net Available** (Line 9). The \$350 threshold does not apply to shared or split placement arrangements.

CHILD(REN)'S PRIMARY SUPPORT NEED

The Court has established minimum levels of income needed to support one or more children. This primary support allowance is added to any work related child care expenses, private school expenses (under some circumstances), and any other expenses for any ongoing special needs of a child.

Line 10--Number of Children of this Union in each Household: Enter the number of children of this union who reside in each parent's household. Add the number in the Father's and Mother's column and enter the result in the Total column. Do not include children from other relationships.

Line 11--Primary Support Allowance: Enter the Primary Support Allowance that matches the number of children in Line 10 for each household (see table below for Primary Support Allowance). Add the number in each column and enter the result in the Total column.

<u>Number of Children</u>	<u>Primary Support Allowance</u>
1	\$350
2	650
3	920
4	1170
each additional	+220

Line 12A--Child Care Expenses necessary for parent to work: Enter the actual Monthly Child Care Expenses for the children of this support action required for the parent to work. No hypothetical or attributed child care costs are permitted. Documentation should be attached to the Form 16(a) financial report.

Line 12B--Other Primary Expenses: Enter any other necessary monthly expenses incurred because of any special needs of the child(ren). Do not include any private or parochial school expenses unless there has been:

- prior agreement of the parties to send the child(ren) to private or parochial school or;
- the child has special needs that require private school or;
- family history indicates that the child likely would have attended private or parochial school and the parents have the financial resources to pay for private or parochial school.

Line 13--Total Primary Need: Add the totals from Lines 11, 12A and 12B. Enter the result in the total column.

Line 14--Primary Support Obligation: Multiply the Share of Total Net Available to each parent (Line 9) by the Total Primary Need (Line 13 Total). Enter the result for each parent.

STANDARD OF LIVING ADJUSTMENT (SOLA)

When there is income available after the parents have met their own and their child(ren)'s primary support needs, the SOLA adjustment is made. SOLA is designed to give the child(ren) a share in each parent's economic well being similar to what the child(ren) would have received if the parents lived as a single family unit.

Line 15--Net Available for SOLA: Subtract the Primary Support Obligation (Line 14) from the Net Income Available for Primary Support (Line 8) for each parent. Enter the result for each parent.

Line 16--SOLA Percentage: Enter the SOLA percentage, from the table above, which corresponds to the Number of Children Due Support in this Support Action (Line 10 Total) but not more than 50 percent unless there is a prior finding of a specific need.

<u>Number of Children</u>	<u>SOLA Percentage</u>
1	16%
2	26%
3	33%
4	39%
each additional	+4%

Line 17A--SOLA Obligation: Multiply the Net Available for SOLA (Line 15) by the SOLA Percentage (Line 16). Enter the result for each parent. Combine the parents' individual SOLA obligations and enter the result in the Total column.

Line 17B--SOLA Per Child: Divide the parents' combined SOLA Obligation (Line 17A Total) by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result.

CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is based on the Primary Support Obligation of each parent plus the SOLA Obligation minus applicable credits. The credits are determined by the placement of the child(ren), primary expenses paid by the parent from whom support is sought and any shift in SOLA expenditures deemed to have occurred as a result from an extraordinary contact schedule.

Line 18--Gross Monthly Obligation: Add the Primary Support Obligation (Line 14) for each parent to the SOLA Obligation (Line 17A). Enter the result for each parent.

Line 19--Parenting Time Adjustment: Where there exists a custody order or written agreement establishing a specific visitation or contact schedule which provides in excess of 109 average overnights per calendar year, the “visiting” parent will be credited a portion of the parents’ combined SOLA. To determine the credit, multiply the number of children to whom the extraordinary contact schedule applies by the Per Child SOLA (Line 17B) and then by the applicable percentage from following Table. Enter the result for each parent.

Annual Overnights	Percentage of SOLA
110 to 134	10
135 to 154	20
155 to 169	30
170 to 179	40

Note: The Family Court Standard Visitation Guidelines constitute 90 average annual overnights.

Line 20--Amounts Retained: In most cases, one parent has primary placement of all of the children, incurs all primary allowances and expenses (Lines 11, 12A and 12B) and there is no Parenting Time Adjustment (Line 19). In those cases, enter that parent’s Gross Monthly Obligation (Line 18) in that parent’s column. Enter zero (“0”) in the other parent’s column. In all other cases, enter for each parent the lesser of the amount on Line 18 or:

- Primary Support Allowance for all children residing in their household (Line 11); plus
- Child Care Expenses (Line 12A), other primary care expenses such as private school tuition (Line 12B) paid directly by them to the provider(s); plus
- SOLA per child (Line 17B) multiplied by the number of children in their household (Line 10): minus
- Any Parenting Time Adjustment (Line 19) given to the other parent.

Line 21--Net Monthly Obligation: For each parent, subtract any Parenting Time Adjustment (Line 19) and any Amounts Retained (Line 20) from the Gross Monthly Obligation (Line 18). Enter the result. The minimum order allowed is \$78 for one child plus \$52 for each additional child.

SHARED EQUAL PLACEMENT

Where parents enjoy **shared equal placement** (at least 180 overnights annually in each household), each child is counted on **Line 10** as one-half or five-tenths (“0.5”) in each household. If this is applied to an odd number of children, the number of children in each household will be fractional (for example: 3 children in shared placement are counted as “1.5” children in each parent’s household). In these cases, additional **Primary Support Allowance** categories are needed. Those are \$175 for “0.5 children”, \$500 for “1.5”, \$785 for “2.5”, \$1045 for “3.5” and \$110 for each additional “0.5”. In all other respects, the calculation is unchanged.

MODIFICATION AND TERMINATION

Within two and one-half years of the establishment of a current support obligation, either party can petition for recalculation of the obligation if they allege “with particularity” a substantial change of circumstances not caused by their own voluntary or wrongful conduct. No modification will be ordered unless the new calculation produces a change of more than 10%. Beyond two and one-half years, neither the “particularity” nor the “10%” requirement applies.

A child support obligation originally established under Delaware law terminates upon a transfer of custody or the emancipation of all of the children who are the subject of the obligation. A transfer of custody (to the obligated parent) must be evidenced by a Court Order or written agreement. Emancipation occurs when a child is 18 and is no longer attending high school but never later than the child’s 19th birthday.